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Dear Mr. Wagener:

Thank you for providing me with this opportunity to comment on the Region IV's draft guidance for state/tribal implementation of Tier II of antidegradation.

In general terms, I was pleased with the agency's outline of provisions to be included in Tier II antidegradation implementation procedures, particularly with the discussion of when proposed degradation requires a state decision under Tier II. Unfortunately, it has been our experience in Kentucky that when an activity is proposed that may have some effect on existing water quality, the state's Division of Water usually determines that the Tier II analysis has not been triggered. The unwritten policy in Kentucky appears to be that antidegradation is not intended to apply to lowering of water quality in water bodies where occasional exceedances of criteria values occur. Consequently, very few water bodies ever receive the kind of protection intended by the federal regulation at 40 CFR 131.12.

For this reason, I am very concerned that the draft guidance continues to suggest that the water body-by-water body/designational approach to Tier II antidegradation implementation can work effectively to provide the kind of protection intended by the law. In the case of Kentucky, for example, the state's most recent triennial review has resulted in the promulgation of a regulation, 401 KAR 5:030, still under review by Region IV, which relies on the stream characterization approach and, due to the absence of data to make a valid assessment in the majority of cases, offers only Tier I protection to most water bodies. The result is that less than 3 percent of the state's stream miles qualify for Tier II protection under this approach.

From my perspective, the parameter-by-parameter approach is the only reasonable means of assuring antidegradation protection

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for those waters that are currently meeting designated uses. Even in those cases where a Tier II analysis may be triggered, no basis for determining the significance of the proposed degradation exists with the designational approach, a problem you have raised in the draft guidance.

My primary concern in reviewing Region IV's draft guidance is the discussion of alternatives on page 5 of the document where it states that "alternative discharge points" are one of the possible options to be considered in the course of an alternatives analysis. Congress expressly rejected dilution as an alternative to proper waste treatment when it passed the Clean Water Act in 1972. It is, therefore, inappropriate for the agency to suggest that relocating a toxic discharge to another receiving stream would in any way relieve either the point source or the regulatory agency of its obligation to reduce the pollution at its source.

The driving force behind the Clean Water Act has been the concept of requiring dischargers to develop better and more effective pollution control technology in order to make progress toward the goal of zero discharge. Any lowering of water quality in Tier II waters should not be deemed "necessary" until it is demonstrated that no alternative treatment technology exists and that the negative impact on the local economy would be severe if some lowering were not approved. Consideration of other discharge points should occur after an alternatives analysis has been completed, not as part of the analysis itself. If EPA is truly committed to pollution prevention, it must strengthen this guidance.

I look forward to the opportunity to discuss these concerns with you in more detail.

Very truly yours,

Elizabeth R. Bennett for

W. Henry Graddy, IV

WHG/sjj